

(iii) A Government authority that is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities, determines that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities; or

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of DOE primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) If an agency exercises the exceptions at paragraph (e)(1)(ii) or (iii) of this section in a contract with a small business concern or a nonprofit organization, the contracting officer shall use the clause at 52.227-11 with only those modifications necessary to address the exceptional circumstances and shall include in the modified clause greater rights determinations procedures equivalent to those at 52.227-13(b)(2).

(3) When using the clause at 52.227-13, Patent Rights—Ownership by the Government, the contracting officer may supplement the clause to require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Provide the filing date, serial number, title, patent number, and issue date for any patent application filed on any subject invention in any country or, upon specific request, copies of any patent application so identified; and

(iv) Submit periodic reports on the utilization of a subject invention.

(4) Use the clause at 52.227-13 with its Alternate I if—

(i) The Government must grant a foreign government a sublicense in subject inventions pursuant to a treaty or executive agreement; or

(ii) The agency head determines, at contract award, that it would be in the

national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement. If other rights are necessary to effectuate any treaty or agreement, Alternate I may be appropriately modified.

(5) Use the clause at 52.227-13 with its Alternate II in the contract when necessary to effectuate an existing or future treaty or agreement.

27.304 Procedures.

27.304-1 General.

(a) *Status as small business concern or nonprofit organization.* If an agency has reason to question the size or nonprofit status of the prospective contractor, the agency may require the prospective contractor to furnish evidence of its nonprofit status or may file a size protest in accordance with FAR 19.302.

(b) *Exceptions.* (1) Before using any of the exceptions under 27.303(e)(1) in a contract with a small business concern or a nonprofit organization and before using the exception of 27.303(e)(1)(ii) for any contractor, the agency shall follow the applicable procedures at 37 CFR 401.

(2) A small business concern or nonprofit organization is entitled to an administrative review of the use of the exceptions at 27.303(e)(1)(i) through (e)(1)(iv) in accordance with agency procedures and 37 CFR part 401.

(c) *Greater rights determinations.* Whenever the contract contains the clause at 52.227-13, Patent Rights—Ownership by the Government, or a patent rights clause modified pursuant to 27.303(e)(2), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in the clause. The contracting officer may grant requests for greater rights if the contracting officer determines that the interests of the United States and the general public will be better served. In making these determinations, the contracting officer shall consider at least the following objectives (see 37 CFR 401.3(b) and 401.15):

(1) Promoting the utilization of inventions arising from federally supported research and development.